

(a) **Relief Pending Appeal.** If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

- (1) defer considering the motion;
- (2) deny the motion; or
- (3) state either that it would grant the motion if the court of appeals Remands for that purpose or that the motion raises a substantial issue.

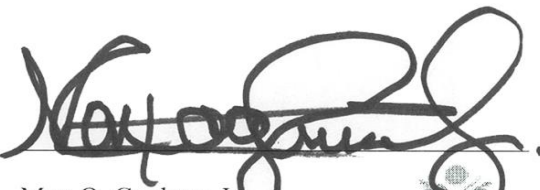
Fed.R.Civ.P. 37(a). Under Rule 37(a)(2), the Court determines that it is appropriate to take up the motion as it does not raise substantial issues that would impact the appeal.

In the motion, defendant seeks relief under the 2018 First Step Act (“2018 FSA”). Generally, the 2018 FSA makes the 2010 Fair Sentencing Act’s (“2010 FSA”) crack reductions retroactive to sentencing that occurred prior to the Fair Sentencing Act’s 2010 enactment.¹ As defendant’s offense of conviction concerns a mail fraud scheme, neither the 2018 FSA nor the 2010 FSA have any application to his case.

ORDER

IT IS, THEREFORE, ORDERED that defendant’s “Motion for Early Release/Refiling of 28 U.S.C. 2255 Petition” (#53), deemed to be a “Motion to Reduce Sentence Pursuant to the First Step Act,” is **DENIED**.

Signed: March 14, 2019


Max O. Cogburn Jr.
United States District Judge

¹ There are other provisions under the 2018 FSA, none of which appear to be applicable to defendant’s situation.